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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARTIN VOGEL and KENNETH
MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

APPLE, INC., STEVEN P. JOBS, FRED
ANDERSON, NANCY HEINEN, WILLIAM V.
CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON, and JEROME P.
YORK,

Defendants.

CASE NO.: C08-03123-JF

CLASS ACTION

**STIPULATION AND ~~[PROPOSED]~~
ORDER CONTINUING CASE
MANAGEMENT CONFERENCE**

Date: September 4, 2009

Time: 10:30 a.m.

Judge: Hon. Jeremy Fogel

Dept: Ctrm. 3, 5th Floor

1 Plaintiffs Martin Vogel and Kenneth Mahoney (“Plaintiffs”) and Defendants Apple
2 Inc. (“Apple”), Fred D. Anderson, Steven P. Jobs, William V. Campbell, Millard S.
3 Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the “Defendants”) hereby
4 stipulate as follows:

5 WHEREAS, on August 24, 2006, Plaintiffs filed a class action complaint before this
6 Court alleging that certain defendants violated the Securities Exchange Act of 1934 (the
7 “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action was
8 entitled *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-05208-JF
9 (N.D. Cal.) (the “Apple Backdating Action No. 1”), and concerning alleged practice of issuing
10 backdating stock options;

11 WHEREAS, on October 24, 2006, New York City Employees' Retirement System
12 (“NYCERS”) moved for their appointment as Lead Plaintiff of the Apple Backdating Action No.
13 1 pursuant to 15 U.S.C. § 78u-4;

14 WHEREAS, on January 19, 2007, this Court appointed NYCERS as Lead Plaintiff of that
15 litigation;

16 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, its Consolidated
17 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and the common
18 law duty of disclosure. The Consolidated Complaint did not assert any claims for Defendants’
19 alleged violations of §10(b) of the Exchange Act;

20 WHEREAS, on November 14, 2007, this Court granted Defendants’ motion to dismiss the
21 Consolidated Complaint on the ground, *inter alia*, that NYCERS failed to plead standing to bring
22 a direct claim (“Dismissal Order”);

23 WHEREAS, this Court granted NYCERS leave to amend its complaint but held that
24 NYCERS could only amend for the purpose of attempting to plead a derivative claim, not a direct
25 class action claim;

26 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First
27 Amended Consolidated Class Action Complaint that contained direct class action claims for
28 alleged violations of § 10(b) of the Exchange Act;

1 WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file an
2 amended complaint ("Denial Order");

3 WHEREAS, on June 12, 2008, this Court entered Judgment for defendants ("Judgment");

4 WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal
5 Order, the Denial Order and subsequent Judgment ("NYCERS's Appeal");

6 WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2") on June 27,
7 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder
8 and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves and
9 other Apple employees;

10 WHEREAS, Plaintiffs and Defendants agreed that if this litigation were to go forward
11 prior to resolution of NYCERS's appeal(s) of the Apple Backdating Action No. 1, there was a
12 risk of duplicative litigation regarding Defendants' alleged backdating and alleged violations of
13 the Exchange Act, and that this risk could result in a waste of judicial resources;

14 WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an
15 Order staying this action pending the resolution of NYCERS's Appeal;

16 WHEREAS, on March 10, 2009, this Court continued the Case Management Conference
17 set for March 6, 2009, to September 4, 2009, at 10:30 a.m.;

18 WHEREAS, the NYCERS's Appeal has been fully briefed and oral argument is currently
19 scheduled before the Ninth Circuit on October 7, 2009;

20 WHEREAS, Plaintiffs and Defendants agree that it would be premature and a waste of
21 judicial resources to hold the status conference prior to oral argument and the Ninth Circuit's
22 ruling on the NYCERS's Appeal;

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1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

2 The Case Management Conference should be continued, if this Court is so
3 amenable, for at least 120 days from Friday, September 4, 2009, to Friday, January 8, 2010,
4 or a later date as ordered by the Court.

5 IT IS SO STIPULATED.

6 Dated: September 2, 2009

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8 By: /s/ Patrice L. Bishop

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19 Attorneys for Plaintiffs

20 Dated: September 2, 2009

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21 Luann L. Simmons
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27 Attorneys for Defendant Apple Inc.
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1 Dated: September 2, 2009

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9 Attorneys for Defendants Steven Jobs, William V.
10 Campbell, Millard S. Drexler, Arthur D. Levinson,
and Jerome P. York

11 Dated: September 2, 2009

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18 Attorneys for Defendant Fred D. Anderson

21 I, Robert D. Tronnes, am the ECF User whose ID and password are being used to file this
22 Stipulation and [Proposed] Order Continuing Case Management Conference. In compliance with
23 General Order 45, X.B., I hereby attest that Patrice L. Bishop, Douglas R. Young, and Yohance
24 C. Edwards have concurred in this filing.


25 By: /s/ Robert D. Tronnes
26 Robert D. Tronnes

~~PROPOSED~~ ORDER

Pursuant to the stipulation of the parties, and for good cause shown, IT IS HEREBY
ORDERED THAT:

The Case Management Conference scheduled for Friday, September 4, 2009, at
10:30 a.m. is hereby continued to Friday, January 8, 2010, at 10:30 a.m.

Dated: 9/3/2009



Honorable Jerome Fogel
United States District Court Judge

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